

UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL MILITARY AFFAIRS
WASHINGTON, D.C. 20520

In the Matter of:

Xe Services LLC

A Delaware Limited Liability Company

Respondent

CONSENT AGREEMENT

WHEREAS, the Office of the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Xe Services LLC, including its operating divisions and subsidiaries ("Respondent") (formerly EP Investments, LLC and also known as Blackwater Worldwide) of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. §§ 2778-2780), and its implementing regulations, the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130);

WHEREAS, the Department acknowledges that Respondent described these matters in voluntary and directed disclosures ("Disclosures")

AUG 16 2010

submitted to the Department; and over the past eighteen months has cooperated with the Department's investigation of this matter;

WHEREAS, the Department acknowledges that Respondent implemented certain remedial compliance measures, including an outside compliance oversight committee, and that these measures have been the subject of an independent audit report to the Department;

WHEREAS, Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Respondent wishes to settle and dispose of all potential civil charges, penalties and sanctions arising from the Proposed Charging Letter by entering into this Consent Agreement;

WHEREAS, Respondent, without admitting or denying the allegations in the Proposed Charging Letter, wishes to avoid the expense and business disruption of litigating the charges and to settle and dispose of all potential civil charges, penalties and sanctions set out in and arising from the Proposed Charging Letter by entering into this Consent Agreement;

WHEREAS, Respondent agrees that this Consent Agreement will remain in effect for a period of four (4) years, subject to the terms and conditions set forth below;

WHEREAS, Respondent agrees that if the Department finds that this Consent Agreement was negotiated based on Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the related administrative order ("Order"), and bring additional charges against Respondent. Additionally, Respondent understands that a violation of this Consent Agreement is considered a violation of the Order; and

WHEREAS, the Department and Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and Respondent agree as follows:

Parties

(1) The Parties to this Consent Agreement are the Department and Respondent, including Respondent's operating divisions and subsidiaries and their assignees and successors, and in the event of reorganization, the terms of this agreement will follow and apply to all affected entities or units.

Jurisdiction

(2) The Department has jurisdiction over Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

Remedial Measures

(3) Respondent reflecting its commitment to conduct its business in full compliance with the AECA and the ITAR, and in order to ensure, in particular, that there are no unauthorized exports or temporary imports of ITAR-controlled defense articles, including technical data, and the provision of defense services has and will continue implementing the following remedial measures and such additional measures as may be mutually agreed upon by Respondent and the Director, Office of Defense Trade Controls Compliance ("DTCC"), and agrees further that these measures will remain in effect for a period of four (4) years, subject to the terms and conditions set forth below, as part of this Consent Agreement entered into with the Department.

(4) Further, Respondent agrees that these measures will be applied to any future Respondent business acquisitions that are involved in the design, manufacture, sale, export or temporary import of ITAR-controlled defense articles, to include technical data, and the provision of defense services within six (6) months of that acquisition.

(5) Further Respondent has notified DDTC that Respondent is in the process of selling the registered entity, Xe Services LLC and a number of its subsidiaries and affiliates. If Xe Services LLC and/or any of its business units or subsidiaries will be sold, Respondent agrees to notify

DDTC of the sale as soon as practical, but no later than two weeks (14 days) prior to such sale, and further to notify the purchaser in writing, and to require the purchaser to acknowledge in writing, prior to the sale that the purchaser will be bound by the terms and conditions of this Consent Agreement.

(6) Respondent acknowledges and accepts its obligation to continue and maintain an effective defense trade control oversight, infrastructure, policies and procedures for its AECA/ITAR-regulated activities.

(7) Respondent did conduct a targeted third-party compliance audit at the direction of Respondent's independent Export Compliance Committee (ECC). Respondent provided a report of this targeted audit to the Department on October 21, 2009.

Official Designated for Consent Agreement Compliance and Oversight

(8) Respondent shall appoint a qualified individual from outside Respondent to serve as a Special Compliance Official ("SCO") for the first three years of the term of this Consent Agreement. The term, authorities, and responsibilities of the SCO are described below.

(9) The SCO shall not have been employed in any prior capacity by or previously represented Respondent or any of its subsidiaries or affiliates, past or present, in any capacity. As a condition of appointment as SCO, he/she shall agree to forsake for all time any such future employment or representation with Respondent. Respondent shall nominate a person to serve as SCO within sixty (60) days from the date of the Order, and the nomination shall be subject to the written approval of the Director, DTCC. Within fifteen (15) days following the date of the approval of the nomination by the Director, DTCC, Respondent shall appoint the person to the position of SCO.

(10) Between 30 and 32 months of his/her appointment, the SCO, after consultations with Respondent, shall recommend for approval by the Director, DTCC one of Respondent's employees to serve as an Internal Special Compliance Official ("ISCO") to replace the SCO at the end of the SCO's term. Respondent shall appoint a qualified individual from inside Respondent to serve as an ISCO for the remainder of the Consent Agreement term.

(11) On the third anniversary from the date of the Order, the SCO will be succeeded by the ISCO, and the ISCO will serve for the remainder of the term of the Consent Agreement. The ISCO shall be fully empowered and capable of performing the responsibilities of the SCO.

(12) Within 15 days of appointment of the SCO or ISCO, Respondent shall empower the SCO or ISCO, respectively, with a written delegation of authority, and statement of work approved by the Director, DTCC, to permit him/her to monitor, oversee and promote Respondent's AECA and ITAR compliance with the terms of this Consent Agreement in a manner consistent with the purpose of this Consent Agreement and the Order, its specific terms and conditions, and other activities subject to the ITAR and the AECA. The SCO or ISCO will report to Respondent's President and the Director, DTCC as set forth herein. The SCO or ISCO shall perform his/her duties in consultation with DTCC.

(13) If for any reason the appointed SCO or ISCO is unable to serve the full period of his/her appointment, or temporarily is unable to carry out the responsibilities described herein greater than thirty (30) days, or if the Director, DTCC decides that the SCO or ISCO shall be removed for failure to perform his/her duties satisfactorily, Respondent shall recommend a successor acceptable to the Director, DTCC.

(14) The Director, DTCC's agreement to the replacement shall be confirmed in writing to Respondent. Such recommendation shall be made at least thirty (30) days in advance of a new appointment unless a shorter period is agreed to by the Director, DTCC. If a successor SCO or ISCO is not appointed within forty-five (45) days of the termination or removal of the appointed SCO or ISCO, this Consent Agreement will be extended for the period of time equal to the period of time Respondent was without an approved appointed SCO or ISCO. Respondent will not be without an SCO or ISCO for more than one-hundred-twenty (120) days unless the Director, DTCC grants an extension.

(15) If the SCO or ISCO for any reason is unable to carry out the responsibilities described herein on a temporary basis, not to exceed thirty (30) days, then Respondent's Vice President of Export Compliance shall assume the duties and authorities of the SCO or ISCO

in the interim. The written delegation of authority and statement of work described in paragraph (12) above shall make provision for this event.

(16) The SCO or ISCO shall have three (3) principal areas of responsibility:

(a) Policy and Procedure: The SCO or ISCO shall monitor Respondent's AECA and ITAR compliance program, including but not limited to the remedial measures already established by the Respondent with specific attention to the following areas some of which associated with the offenses alleged in the Proposed-Charging Letter:

1. Policies and procedures that incorporate AECA and ITAR compliance into Respondent's management business plans at the senior executive level;
2. Meeting and maintaining adequate AECA and ITAR compliance staffing levels at or covering all business units and subsidiaries that involve ITAR-related activities;
3. Policies and procedures for conducting internal compliance monitoring and audits;
4. Policies and procedures for the identification, classification, monitoring, and management of defense services;
5. Policies and procedures for the identification and classification of defense articles, including technical data;
6. Policies and procedures for screening all U.S. and foreign persons subject of a license request or regulatory exemption;
7. Policies and procedures for complying with the terms, conditions, and provisos of licenses and other approvals (*e.g.*, agreements);
8. Policies and procedures for preventing, detecting, and reporting AECA and ITAR violations;

9. Policies and procedures that encourage Respondent's employees to report ITAR compliance problems without fear of reprisal. These policies and procedures should include multiple avenues by which problems can be reported safe from reprisals and a method of documenting the event under review, management's action, and the result of any action taken by management in resolving the issue;
10. Policies and procedures for submitting voluntary disclosures to the Department of State;
11. Policies and procedures for tracking and ensuring the timely return to the United States of any defense articles exported temporarily;
12. Policies and procedures for ensuring physical security of facilities where ITAR-controlled activity occurs, except in dangerous and austere conditions (i.e., combat situations); required by the terms in a U.S. Government contract for physical security at a location overseas in supporting dangerous missions; or as otherwise ordered by a combatant commander or chief of mission at a location overseas in supporting dangerous missions;
13. Policies and procedures to maintain Respondent's technology control plan;
14. Policies and procedures for the proper use of ITAR exemptions;
15. Policies and procedures for foreign travel involving ITAR-controlled activities;
16. Policies and procedures for the screening and control of foreign-person visitors;
17. Policies and procedures for maintaining appropriate ITAR records;

18. Policies and procedures for the shipping department responsible for exporting ITAR-controlled articles;
19. Policies and procedures for the employment of foreign persons who may be engaged in ITAR-controlled activity or have access to ITAR-controlled technical data;
20. Policies and procedures for tracking research and development work to ensure that all such work that involves defense articles, including technical data, and defense services is in compliance with the AECA and ITAR from inception to completion of the work;
21. Policies and procedures for ensuring that exports of classified technical data and classified defense articles are in compliance with § 125.3 of the ITAR; and
22. Policies and procedures for screening and obtaining services of potential brokers pursuant to Part 129 of the ITAR.

(b) Oversight: The SCO or ISCO shall oversee the following specific areas:

1. Respondent's continuation of the compliance measures required by this Consent Agreement;
2. Respondent's corporate oversight of ITAR compliance and performance of its responsibilities under this Consent Agreement and the Order in a timely and satisfactory manner;
3. The continued incorporation of ITAR compliance into Respondent's management business plans at the senior executive level;
4. The certification in the reports to DTCC required by paragraph (16)(c) as to each license or other approval in the relevant reporting period;

5. The certification in the reports to DTCC required by paragraph (16)(c) using ITAR exemptions in the relevant reporting period;
6. Overseeing and verifying expenditures for Consent Agreement remedial compliance measures;
7. Overseeing the improvement of the automated defense trade control and compliance system;
8. Overseeing internal ITAR audits; and
9. Continuation and implementation of additional policies and procedures that encourage Respondent's employees to report ITAR compliance problems without fear of reprisal.

(c) Reporting: The SCO or ISCO is responsible for the following reporting requirements:

1. Tracking, evaluating and reporting on Respondent's review of ITAR violations and compliance resources;
2. Providing to the Director, DTCC, within six (6) months from the date of the Order, at the one-year anniversary from the date of the Order, and then semi-annually thereafter, status reports on the status of Respondent's ITAR compliance program, any enhancements thereto, and resource levels and their impact on or benefit to ensuring ITAR compliance.

These reports should also include information concerning Respondent's compliance with this Consent Agreement, and findings, conclusions and any recommendations necessary to ensure strict compliance with the ITAR, describe any and all instances of previous recommendations advanced by the SCO or ISCO.

Additionally, these reports may, in a separate annex, include any relevant comments or input by Respondent. Respondent shall continue ITAR compliance oversight throughout Respondent to ensure that best practices learned are

implemented throughout all of its ITAR-regulated businesses. Any such reports shall not affect Respondent's use of the Voluntary Disclosure procedures set forth in § 127.12 of the ITAR or Respondent's ability to gain mitigation benefits from such voluntary disclosures;

3. Providing to the Director, DTCC, a quarterly report (due March 30, June 30, September 30, and December 30) for the first year, and then semi-annually (June 30 and December 30) thereafter, that includes a certification by Respondent's Vice President of Export Compliance validated by the SCO as to each license or other approval, or use of an exemption, employed during the reporting period, addressing whether all provisions of each license or other approval and each exemption, have been complied with, whether all training of relevant personnel necessary to implement the licenses, other authorizations and exemptions was completed, and whether appropriate internal controls were in place; and
4. Validating and providing an accounting report on remedial compliance measures to Respondent's General Counsel, and other senior officials as appropriate, and to the Director, DTCC, within one year from the date of the Order and then annually thereafter. Respondent shall prepare the accounting report, certified as correct by the Chief Financial Officer (CFO), of remedial-measure expenditures to maintain, improve or implement Respondent's compliance system.

(17) With the understanding that nothing in this Agreement shall be interpreted to compel a waiver of applicable attorney-client or work-product protections, the SCO or ISCO shall have full and complete access to all personnel, books, records, documents, audits, reports, facilities and technical information relating to compliance with this Consent Agreement, and to all munitions authorizations, licenses, and Respondent's guidance relating to the export of defense articles, including technical data, and defense services.

(18) Respondent's business units or subsidiaries shall cooperate with all reasonable requests of the SCO or ISCO, including requests for assistance to obtain necessary security clearances, and shall take no

action to interfere with or impede the SCO's or ISCO's ability to monitor Respondent's compliance with this Consent Agreement, the Order and the AECA and the ITAR, or to carry out SCO's or ISCO's other responsibilities set forth in this Consent Agreement. The SCO or ISCO shall notify DTCC whenever the SCO or ISCO encounters any difficulties in exercising the duties and responsibilities assigned under this Consent Agreement.

(19) The SCO or ISCO may be requested to perform additional defense trade oversight, monitoring and coordination of activities as agreed to by Respondent and the Director, DTCC.

(20) In fulfilling the responsibilities set forth in this Consent Agreement, the SCO or ISCO may, at his/her sole discretion, present any defense trade compliance-related issue directly to any or all among Respondent's President or the General Counsel, and if necessary the Director, DTCC.

(21) The SCO or ISCO shall, with the approval of the Director, DTCC and the concurrence of Respondent, have the authority to employ in a support capacity at the expense of Respondent, such assistants and other professional staff as are reasonably necessary to assist the SCO or ISCO to carry out his/her duties and responsibilities.

(22) The Director, DTCC shall on his/her own initiative or at the request of the SCO or ISCO issue such guidance as may be necessary or appropriate to help ensure strict compliance with the AECA, ITAR, and the terms and conditions of authorizations DDTC has provided to Respondent.

Compliance Resources and Program Enhancements

(23) Under this Consent Agreement, Respondent shall ensure that adequate resources are and continue to be dedicated to ITAR compliance throughout Respondent's ITAR-regulated business units and subsidiaries. Respondent shall continue policies and procedures, and make enhancements as required, for all Respondent employees with responsibility for AECA and ITAR compliance that address lines of authority, staffing increases, performance evaluations, career paths, promotions and compensation.

(24) Within 120 days from the date of the Order, Respondent, in coordination with the SCO, shall conduct an internal review of AECA and ITAR compliance resources throughout its ITAR-regulated business units and subsidiaries, and establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of additional resources from compliance cross-trained employees on a part time basis when needed.

(25) Respondent shall provide to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports on ITAR compliance program enhancements and resource levels and their effect on ensuring ITAR compliance. Respondent shall provide AECA and ITAR compliance oversight and ensure that best practices learned were implemented throughout all of its ITAR-regulated businesses.

Strengthened Compliance Policies, Procedures, and Training

(26) Respondent will continue compliance policies and procedures referenced in the Audit report and within twelve (12) months from the date of the Order, Respondent will have instituted strengthened corporate export compliance procedures, as appropriate, focused principally on ensuring that Respondent's business operations continue to address the following:

(a) All Respondent personnel engaged in ITAR-regulated activities are familiar with the AECA and the ITAR, and their own and Respondent's responsibilities, thereunder;

(b) All persons responsible for supervising those employees, including senior managers of those business units or subsidiaries, are knowledgeable about the underlying policies and principles of the AECA and the ITAR;

(c) A plan for all new employees to receive basic ITAR compliance training at Orientation;

(d) A plan for all Respondent personnel engaged in ITAR-regulated activities to receive on-going web-based (or its equivalent) general and focused face-to-face ITAR training on at

least an annual basis. If Respondent was unable to provide focused face-to-face ITAR training to any personnel due to long-term deployment, Respondent must provide a list of such personnel and their positions, and provide a description of the alternative ITAR-training that was provided; and

(e) Maintenance of training data indicating the names of employees, trainers (for face-to-face training), and level and area of training received (*e.g.*, providing technical data, use of public domain information in performing defense services, applicability of ITAR to foreign origin defense articles).

Automated Export Compliance System

(27) Respondent shall implement or make improvements to a comprehensive automated defense trade compliance system to strengthen Respondent's internal controls for ensuring compliance with the AECA and the ITAR. Respondent will provide to DTCC in its report outlined in paragraph (16)(c) above an update outlining the status of Respondent's automated export compliance system.

(28) This system will track the decision process from the initiation of a request to the Department for authorization or clarification of an existing authorization to its conclusion that will reflect Respondent's ability to oversee and monitor defense trade activity. This system will also cover the initial identification of all technical data and technical assistance in any form proposed to be disclosed to any foreign persons and will be accessible to DTCC upon request. Also, the system will have a mechanism to track defense articles exported under DSP-73 temporary licenses and subsequently imported back to the U.S. Further, the system will have a mechanism to track whether exports of licensed articles were properly filed with the Automated Export System (AES) and endorsed with the Customs and Border Protection (CBP).

(29) Respondent will develop within Respondent's e-mail system a means of alerting users to the AECA and ITAR requirements on electronic transmissions of ITAR technical data. This alert system will include a login banner that is displayed when any employee logs onto the system, which will describe AECA and ITAR requirements and offer contact information for anyone who has questions.

(30) In order to prevent unintentional or accidental transmissions to unauthorized recipients, Respondent will also provide training to all employees to ensure that any type of electronic transmissions of ITAR-controlled technical data are sent in accordance with Respondent's defense trade compliance policies and procedures.

Audits

(31) Respondent shall have outside consultants with expertise in AECA/ITAR matters, approved by the Director, DTCC, perform two audits during the term of this Consent Agreement. The audits will be conducted under the supervision of the SCO or ISCO.

(32) Within six (6) months from the date of the Order, a draft audit plan for the first audit shall be submitted to the Director, DTCC, for review and approval. Within one (1) year from the date of the Order, the first audit will be completed along with a written report containing recommendations for improvements, if any, with respect to Consent Agreement measures, or compliance with the AECA or the ITAR more generally. The first such audit results and report will be submitted by Respondent to the Director, DTCC, along with Respondent's plan to address recommendations, if any. Respondent agrees that it will not assert attorney-client privilege as to the audit results and the report.

(33) The first audit shall provide a thorough assessment of the effectiveness of Respondent's compliance with requirements of this Consent Agreement with focus on those actions undertaken prior to and after the date of this Consent Agreement to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the SCO or the Director, DTCC. Additionally, this first audit will assess the overall effectiveness of Respondent's ITAR compliance programs.

(34) Subsequently, within 39 months after the date of the Order, a draft audit plan for the second audit will be submitted to the Director, DTCC for review and approval. Within 46 months after the date of the Order, Respondent shall have the second audit conducted and reported to the Department by outside consultants with expertise in AECA/ITAR

matters. The second audit results and report will be submitted by Respondent to the Director, DTCC, and Respondent agrees that there is no attorney-client privilege associated with the audit results and the report.

(35) The second audit shall be as comprehensive as the first audit, and also, verify whether Respondent addressed the compliance recommendations from the first audit report.

Continued Compliance Hot-Line and Anonymous Reporting Program

(36) Respondent will continue and publicize to its employees the availability of Respondent's Procedure for Reporting and Investigating Suspected Incidents through Ethical Advocate or to other Authorities Program for reporting concerns, complaints and perceived violations involving the AECA and the ITAR to ensure that such concerns, complaints and violations may be readily reported via this channel, without fear of recrimination or retaliation. Once such complaints, concerns or violations about such matters have been reported, Respondent will ensure that this information is forwarded to Respondent's General Counsel and the SCO or ISCO. The General Counsel and SCO or ISCO will be responsible for resolving such matters.

(37) If the General Counsel or SCO or ISCO is the subject of the complaint, concern or violation, the matter will be referred to Respondent's President for resolution. The SCO or ISCO shall include in its report pursuant to paragraph (16)(c) above an assessment of the effectiveness of the reporting program relating to export matters. This report will be in sufficient detail such that the Department may, consistent with its responsibilities under law and regulation, form an opinion about the seriousness of the alleged violations, without disclosing employee confidentiality.

Penalty

(38) Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of forty two (42) million dollars in complete settlement of alleged civil violations pursuant to Section 38 of the AECA and the ITAR, as set forth in the Proposed

Charging Letter. The Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement, and that the Statute of Limitations shall be tolled until the last payment is made. Respondent also agrees that such civil penalty shall be a non-dischargeable debt in accordance with Section 523(a)(7) of the Federal Bankruptcy Code. The civil penalty shall be payable as follows:

- a) Thirty million dollars (\$30,000,000) shall be paid through five installments as follows:
 - 1) Six million dollars (\$6,000,000) shall be paid to the Department of State within fifteen (15) days from the date of the Order. Respondent shall pay an additional six million dollars (\$6,000,000) by each of the first, second, third, and fourth anniversaries from the date of the Order.
 - 2) The Department and Respondent agree that no interest shall accrue or be due on the unpaid portion of the civil penalty if timely payments are made as set forth in paragraph (38)(a)(1) above.
- b) The remaining penalty of twelve million dollars (\$12,000,000) is hereby assessed, but this amount will be suspended in accordance with the following:
 - 1) Six million dollars (\$6,000,000) will be suspended on the condition that Respondent has already applied this amount to self-initiated, pre-Consent Agreement remedial compliance measures, determined by DTCC as set forth in paragraphs (38)(c) below, some of these expenses have been reported to the Department on July 1, 2009, by Respondent.
 - 2) Six million dollars (\$6,000,000) will be suspended on the condition that Respondent applies this amount to Consent Agreement-authorized remedial compliance measures, determined by DTCC as set forth in paragraphs (38)(c) below. Respondent will apply this remaining six million dollars (\$6,000,000) over a forty eight (48) month period from the date of the Order for the purpose of defraying a portion of the

costs associated with the remedial compliance measures specified in this Consent Agreement.

- c) In accordance with paragraph (38)(b), the SCO will conduct a review of Respondent's expenditures for the compliance measures referenced in paragraphs (38)(b)(1)&(2), and provide the results of the review to DTCC. DTCC will determine from that review if the expenditures claimed by the Respondent to date were spent for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs. To the extent that DTCC determines that expenditures claimed or any portion thereof were used for self-initiated, pre-Consent Agreement remedial compliance measures or Consent Agreement-authorized remedial compliance costs, such amounts will be credited against the suspended penalty amounts outlined in (38)(b)(1)&(2), respectively.

Specifically, Respondent's SCO will provide to DTCC no later than six (6) months from the date of the Order for verification and approval an itemized accounting of all self-initiated, pre-Consent Agreement remedial compliance measures and Consent Agreement-authorized remedial compliance expenditures, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance within the terms of this Consent Agreement. The remaining portion of the suspended penalty outlined in paragraph (38)(b)(1)&(2), if any, shall not be suspended and shall be paid as a cash penalty. Any remaining portion at that time of the suspended penalty outlined in paragraph (38)(b)(1)&(2) shall be used for additional Consent Agreement-authorized remedial compliance costs, including auditing services.

Respondent's ISCO shall then at forty five (45) months from the date of the Order provide to DTCC for verification and approval an itemized accounting of all Consent Agreement-authorized remedial compliance expenditures for all four years. Respondent shall have forty five (45) months from the date of the Order to claim and use any remaining portion of the six million dollar (\$6,000,000) suspended penalty referenced in paragraph (38)(b)(2) on Consent Agreement-authorized remedial compliance

costs. Any remaining portion at that point of the suspended penalty outlined in paragraph (38)(b)(2) shall be paid as a cash penalty.

(39) Respondent is precluded from applying any portion of the forty two million dollar (\$42,000,000) penalty set forth in paragraph (38), except for approved suspended amounts under paragraph (38)(b)(1) above, as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the forty two million dollars (\$42,000,000), except for approved suspended amounts under paragraph (38)(b)(1) above, penalty as costs in any contract with any agency of the U.S. Government. Respondent agrees and shall certify to the following in each written accounting report that the forty two million dollar (\$42,000,000) penalty, except for approved suspended amounts under paragraph (38)(b)(1) above, (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) will not be taken as a federal tax deduction. In the event Respondent violates these prohibitions, the Department will deem it a "failure to apply funds appropriately for the required purpose."

(40) Any failure to apply funds appropriately for the required purpose, or to provide a satisfactory accounting shall result in a lifting of the suspension, in which case Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for expenditures in compliance with this Consent Agreement.

Debarment

(41) Respondent has acknowledged the seriousness of the civil charges cited in the Proposed Charging Letter. Respondent has over the past eighteen months cooperated with the Department's investigation, expressed regret for these activities, established an independent export compliance committee (the "ECC"), taken meaningful steps to improve its compliance programs, and has hired new senior managers and ITAR compliance personnel. It has also undertaken to make amends by paying

a cash penalty, and agreeing to implement the significant additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined that an administrative debarment of Respondent based on the civil charges in the Proposed Charging Letter is not appropriate at this time. The Department reserves the right to consider imposing additional sanctions, including debarment under the ITAR, against the Respondent or any subsidiary or other affiliate, if it does not fulfill the provisions of this Consent Agreement, or is responsible for other compliance or law enforcement concerns under the AECA, or other statutes enumerated in § 120.27 of the ITAR.

Defense Articles and Defense Services

(42) Respondent, its subsidiaries, and other affiliates acknowledge and accept the authority of the Department to designate an item as a defense article, and that the ITAR requires written authorization before such articles are exported or temporarily imported, regardless of whether the underlying defense article is used in a commercial system or product.

(43) Respondent, its business units, subsidiaries, and other affiliates acknowledge and accept the authority of the Department to designate what constitutes a defense service based on the following:

- (a) The definition of “defense services” in Section 120.9 of the ITAR is clear and understood by them as setting out responsibilities and requirements which are binding as a matter of law and regulation on them;
- (b) The furnishing of defense services to foreign persons regardless of whether the underlying defense article(s) is of U.S. or foreign origin is appropriately subject to the Department’s control under the ITAR, even when no technical data is involved (*e.g.*, all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain);
- (c) The law and regulations governing “defense services” and proposals to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on criminal and civil grounds; and

- (d) Respondent is responsible and obligated as a matter of law and regulation to comply with the requirements of such law and regulations as they pertain to “defense services” and related matters.

Material Facts in a Commodity Jurisdiction Request

(44) Respondent acknowledges that the Commodity Jurisdiction (“CJ”) process under § 120.4 of the ITAR is the mechanism for resolving questions as to whether an item is a defense article subject to the Department’s jurisdiction under the ITAR. Respondent further acknowledges that the incorporation of a defense article into an item subject to a CJ request is a material fact within the meaning of Section 127.2 of the ITAR, which must be disclosed in the CJ request, and that such request and any related documents are export control documents under the ITAR.

Legal Department Support

(45) Respondent’s General Counsel’s office will continue to provide support in all divisions for all matters involving the AECA and the ITAR. This support will continue to be structured to achieve Respondent’s consistent application of the AECA and the ITAR throughout Respondent, its subsidiaries and other affiliates. Additionally, Respondent’s General Counsel’s office shall ensure that in each business unit, subsidiary and other affiliate appropriate legal support is made available as necessary to the principal personnel responsible for compliance with the AECA and the ITAR, and appropriate legal oversight is performed in each business unit with respect to such matters.

On-site Reviews by the Department

(46) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, Respondent agrees to arrange and facilitate, with minimum advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

Understandings

(47) No agreement, understanding, representation or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Specifically, Respondent acknowledges and accepts that there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

(48) Respondent acknowledges the nature and seriousness of the civil charges in the Proposed Charging Letter, including the potential risk of harm to the security and foreign policy interests of the United States, such potential risk always being present in the event of alleged ITAR violations. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement. The Department and Respondent agree that this Consent Agreement is for settlement purposes only. For purposes of this Consent Agreement, Respondent neither admits nor denies the allegations in the Proposed Charging Letter.

(49) The Department agrees that, upon signing of the Order, this Consent Agreement resolves with respect to Respondent the civil penalties or administrative sanctions with respect to violations of Section 38 of the AECA or the ITAR arising from facts Respondent has disclosed in writing to the Department in its Disclosures 07-0000263, 07-0000894, 08-0000010, 08-0000074, 08-0000392, 08-0000608, 08-0000765, 08-0000828, 08-00001180, 08-0001276, 08-0001419, 09-0000063, 09-0000072, 09-0000073, 09-0000140, 09-0000171, 09-0000436, 09-0000440, 09-0000453, 09-0000454, 09-0000523, 09-0000555, 09-0000627, 09-0000629, 09-0000652, 09-0000766, 09-0000806, 09-

0000837, 09-0000961, 09-0001118, 09-0001176, or that have been identified in the Proposed Charging Letter.

Waiver

(50) Respondent waives, upon the signing of the Order, all rights to seek any further steps in this matter, including a formal administrative hearing pursuant to Part 128 of the ITAR. The Respondent also waives any such rights with respect to any additional penalty assessed by the Director, DTCC in connection with an alleged material violation of this Consent Agreement limited to one million dollars (\$1,000,000) except as follows: In the event that the Director, Office of Defense Trade Controls Compliance, determines that Respondent has materially violated this Consent Agreement and imposes such additional penalty, and Respondent disputes such determination, Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs. The decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed.

(51) Respondent also agrees that any such additional civil penalty shall be nondischargeable under Section 523(a)(7) of the Federal Bankruptcy Code. Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

Certification

(52) No earlier than three months prior to the conclusion of the four (4) year term of this Consent Agreement, the President of Respondent shall submit to the Director, DTCC, a written certification that all compliance measures set forth in this Consent Agreement have been implemented, and that Respondent has assessed its current ITAR compliance program and certifies that it is adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

(53) The Consent Agreement shall remain in force beyond the four (4) year term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all

compliance measures referenced in this Consent Agreement have been continued or implemented, and that Respondent's ITAR compliance program is adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

Documents to be made public

(54) Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter and the Order, when entered, available to the public.

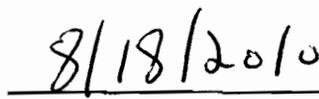
When Order Becomes Effective

(55) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

U.S. Department of State



Andrew J. Shapiro
Assistant Secretary for
Political-Military Affairs

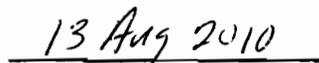


Date

Xe Services LLC



Victor Esposito
Executive Vice President
Chief Operating Officer



Date